

(Note: The Supreme Judicial Court approved and promulgated the Amendments to Superior Court Rules 9, 9A, 9C, 9D and new Superior Court Rule 9E on October 6, 2004. The Amendments and New Rule are effective November 1, 2004.)

RULE 9

(Applicable to all cases)

All civil motions shall be governed, where applicable, by Superior Court Rules 9A through 9E.

Any criminal motion must be in writing and filed before being placed upon a list for hearing, unless otherwise ordered by the court, or otherwise provided for under Superior Court Rule 61.

In criminal cases the court need not hear any motion, or opposition thereto, grounded on facts, unless the facts are verified by affidavit. No motion to suppress evidence, other than evidence seized during a warrantless search, and no motion to dismiss may be filed unless accompanied by a memorandum of law, except when otherwise ordered by the court.

RULE 9A. MOTIONS AND INTERLOCUTORY MATTERS

(Applicable to all civil cases)

(a) Submission of Motions and Oppositions Thereto.

(1) *Submission of Motion.* The moving party shall serve with the motion a statement of reasons, including supporting authorities, why the motion should be granted and may include a request for a hearing. The statement of reasons shall be contained in a separate memorandum. Affidavits and other documents setting forth or evidencing facts on which the motion is based shall be served with the motion.

(2) *Submission of Opposition to Motion.* A party opposing a motion may serve an opposition within (A) 10 days after service of a motion other than a motion for summary judgment, (B) 21 days after service of a motion for summary judgment or (C) such additional time as is allowed by statute or order of the court. With the opposition, the party may serve in a separate memorandum a statement of reasons, with supporting authorities, why the motion should not be allowed and may include a request for a hearing. Affidavits and other documents setting forth or evidencing facts on which the opposition is based shall be served with the opposition.

(3) *Reply Memoranda.* Memoranda in reply to memoranda in opposition to a motion may not be served without leave of court as permitted in subparagraph (b)(4) hereof. Such leave must be sought within five (5) days of service of the memoranda to which it applies. If leave for such a reply is granted, the court shall set the time for its service and the time for any further response thereto.

(4) *Facts Verified by Affidavit.* In civil cases the court need not hear any motion, or opposition thereto, grounded on facts, unless the facts are verified by affidavit, or are apparent upon the record and files, or are agreed to and stated in writing signed by the attorneys for the parties interested.

(5) *Additional Papers.* Papers not served with the motion or opposition may be filed only with leave of court.

(b) Procedure for Serving and Filing Motions.

(1) *General.* All motions and oppositions shall be served on all parties and filed in court in accordance with the procedure set forth in this Paragraph (b). Compliance with this Paragraph is compliance with the “reasonable time” provisions of the first sentence of Mass. R.

Civ. P. 5(d)(1).

(2) *Service and Filing of Motions and Oppositions.* The moving party shall serve a copy of the motion and the other documents specified in Paragraph (a)(1) of this rule on every other party. Every opposing party shall serve on the moving party an original and a copy, and on every other party a copy, of the opposition and the other documents specified in Paragraph (a)(2) of this rule. Service shall be made within the time permitted by Paragraph (a)(2) of this rule and Mass. R. Civ. P. 6(d). Upon receipt of the opposition and associated documents, if any, the moving party shall physically attach the original of the opposition and associated documents to the original motion and associated documents and within ten days shall file with the clerk the combined documents unless within the same ten-day period the moving party notifies all counsel that the motion has been withdrawn. A separate document accompanying the filing shall list the title of each paper in the combined documents. If the moving party does not receive an opposition within three business days after expiration of the time permitted for service of oppositions, then the moving party shall file with the clerk the motion and other documents initially served on the other parties with an affidavit reciting compliance with this rule and receipt of no opposition in timely fashion or a statement that the motion is withdrawn and will not be filed. The moving party shall give prompt notice of the filing of the motion to all other parties by serving thereon a copy of a certificate of service on a separate document.

(3) *Cross-Motions.* Cross-motions (including, motions to strike), accompanied by the other documents specified in Paragraph (a)(1) of this rule, shall be served on the moving party with the opposition to the original motion. Upon receipt of the cross-motion and opposition, the moving party (A) may serve an opposition in accordance with Paragraph (b)(2) of this rule and (B) shall file the cross-motion and any opposition with the papers and in the manner specified in Paragraph (b)(2) of this rule. After receipt of an opposition or cross motion and supporting papers, the moving party may serve on the opposing party any appropriate motion to strike. If the moving party serves such a motion, he or she shall not file the papers described in Paragraph (b)(2) of this rule until the time for filing an opposition to the motion to strike has expired. The moving party shall file the motion to strike and any opposition thereto with the papers and in the manner specified in Paragraph (b)(2) of this rule.

(4) *Form of Motions and Memoranda.* All motions, memoranda of law and other papers filed pursuant to this rule shall be filed on 8 1/2" by 11" paper. Unless leave of court to file a memorandum of greater length has been obtained in advance, the initial memorandum of law and the initial response thereto shall not exceed the equivalent of twenty (20) typed, double-spaced pages provided that (A) the title of the case, footnotes and quotations may be single spaced and (B) any appendix permitted by Superior Court Rule 30A shall not be included in the twenty-page limit and any reply memoranda shall not exceed the equivalent of ten (10) typed, double-spaced pages. To obtain leave of court, counsel may send a letter to the Justice presiding in the session where the motion will be filed stating the number of pages counsel desires and why counsel's objective cannot be achieved in twenty pages. The letter shall be served on counsel for all other parties. Any leave of court obtained by the moving party shall apply to all parties and the moving party shall serve notice thereof with the moving party's brief.

(5) *Summary Judgment.* Each motion for summary judgment shall be accompanied by a

concise statement, in consecutive numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried, with page or paragraph references to supporting pleadings, depositions, answers to interrogatories, admissions and affidavits, and a statement of the legal elements, with citations to supporting law, of each claim upon which summary judgment is sought. Failure to include the foregoing statements shall constitute grounds for denial of the motion.

Each opposition to a motion for summary judgment shall include a response, using the same paragraph numbers, to the moving party's statement of facts as to which the moving party claims there is no genuine issue to be tried, in consecutive numbered paragraphs, a concise statement of any additional material facts as to which the opposing party contends there is a genuine issue to be tried, with page or paragraph references to supporting pleadings, depositions, answers to interrogatories, admissions and affidavits, and in the event the opposing party disagrees with the moving party's statement of the elements of the claims as to which summary judgment is sought, a statement of the legal elements, with citations to supporting law, of each claim upon which summary judgment is opposed.

Neither the concise statement of material facts as to which there is no genuine issue to be tried nor the response thereto shall be subject to the twenty-page limitation in subparagraph (4) above.

For purposes of the motion for summary judgment, facts contained in a statement described in the first paragraph hereof shall be deemed to have been admitted unless controverted in the manner set forth in the second paragraph hereof.

The statements filed by the moving party and opponent shall be accompanied by copies of all cited portions of documents referred to in those statements.

It shall be the responsibility of the parties to cooperate and file with the motion papers a single combined set of those exhibits, documents, transcripts and other things relied upon by all parties, in order thereby to avoid the filing of duplicate or multiple copies of the same things. In this process, the parties ought not over-designate materials and thereby burden the court. Further, however, within the spirit of the foregoing, no request for the inclusion of materials shall be denied by the party assembling the record.

(6) *Sanctions for Noncompliance.* The court need not act on any motion unless the parties have complied with the requirements of this procedure.

(c) Hearings on Motions.

(1) *Marking.* No party shall mark any motion for hearing. In the event that the court believes that a hearing is necessary or helpful to a disposition of the motion, the court will set the time and date for the hearing and will notify the parties of that date and time.

(2) *Request for Hearing.* A request for a hearing shall set forth any statute or rule of court which, in the judgment of the submitting party, requires a hearing on the motion. After

reviewing the motion, the court will decide whether a hearing should be held and, if a hearing is to be held, will notify the parties in accordance with Paragraph (c)(1) hereof. Failure to request a hearing shall be deemed a waiver of any right to a hearing afforded by statute or court rule.

(3) *Presumptive Right to a Hearing.* Requests for hearings on the following motions will ordinarily be allowed: Attachments (Rule 4.1), Trustee Process (Rule 4.2), Dismiss (Rule 12), Adopt Master's Report (Rule 53), Summary Judgment (Rule 56), Injunctions (Rule 65), Receivers (Rule 66), Lis Pendens (G.L. c. 184, sec. 15). Denial of a request for hearing on such motions will be accompanied by a written statement of reasons for the denial.

(d) **Disposition of Motions.** Motions which are not set down for hearing in accordance with Paragraph (c) hereof will be decided on the papers filed in accordance with this rule.

(e) **Exceptions.** The provisions of this rule shall not apply to the following motions:

(1) *Ex Parte, Emergency and Other Motions.* Hearings on, or disposition of, ex parte, emergency and appointment of special process server motions shall be scheduled on an individual basis through the appropriate clerk of court.

(2) *Motions Excepted by Administrative Order.* Motions excepted from the operation of this rule by Administrative Order of the Superior Court shall be governed in all respects by the terms of that Administrative Order.

RULE 9C. SETTLEMENT OF DISCOVERY DISPUTES

(Applicable to all civil cases)

Counsel for each of the parties shall confer in advance of filing any motion under Mass. R. Civ. P. 26 or 37 in a good faith effort to narrow areas of disagreement to the fullest extent. Counsel for the party who intends to file the motion shall be responsible for initiating the conference. All such motions shall contain a certificate stating that the conference required by this Rule was held, together with the date and time of the conference and the names of all participating parties. Motions unaccompanied by such certificate will be denied without prejudice to renewal when accompanied by the required certificate.

RULE 9D. MOTIONS FOR RECONSIDERATION

(Applicable to all civil cases)

Motions for reconsideration shall be served and processed consistent with Rule 9A. Such motions seeking reconsideration of motions made pursuant to Mass. R. Civ. P. 50(b), 52(b), 59(b), 59(e) or 60(b) are considered made or served for purposes of those rules on the date of service pursuant to Rule 9A.

Additionally, the words “MOTION FOR RECONSIDERATION” shall appear clearly in the title of the motion. Upon filing, the clerk shall transmit the motion and supporting papers to the Justice who decided the original motion. If, upon reviewing the motion and supporting documents, the Justice who decided the original motion desires to hold a hearing on the motion for reconsideration, he or she may schedule a hearing thereon. Alternatively, he or she may refer the motion for reconsideration to the Regional Administrative Justice for the region where the case is pending.

RULE 9E. MOTIONS TO DISMISS AND POST-TRIAL MOTIONS

(Applicable to all civil cases)

Motions to dismiss pursuant to Mass. R. Civ. P. 12 are subject to Rule 9A. Because such motions often are the initial filing in response to a complaint, counterclaim or cross-claim, in order to avoid the entry of a default for failure to respond in a timely fashion, a party responding by a motion to dismiss must serve the motion on all parties pursuant to Superior Court Rule 9A(b)(2) and, in a timely manner, must also file with the court a simple “Notice of Motion to Dismiss” reciting the title of the motion and the date of its service on the parties.

Post-trial motions pursuant to Mass. R. Civ. P. 50, 52, 59 and 60 are subject to Rule 9A. A party serving any such motion must serve the motion on all parties pursuant to Superior Court Rule 9A(b)(2) and, in a timely manner, must also file with the court a simple “Notice of Motion” reciting the title of the motion and the date of its service on the parties.